

## Message Text

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ORIGIN COA-02

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FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA PRIORITY

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EO 11652 NA

TAGS EFIS CA

SUBJECT: EXTENSION OF US-CANADA RECIPROCAL FISHING

AGREEMENT

REF: STATE 76750

1. SHORTLY AFTER DESPATCH OF REFTEL PROBLEM AROSE CONCERNING LEGAL STATUS OF WATERS OF LOWER COOK INLET, ALASKA. REGRET INTERJECTION OF ADDITIONAL ISSUE AT THIS LATE DATE BUT CONSIDER IT REQUIRES CONSIDERATION IN CONNECTION EXTENSION OF AGREEMENT SINCE IT HAS TO DO WITH CANADIAN RECIPROCAL FISHING PRIVILEGES IN COOK INLET AREA. BACKGROUND FOLLOWS IN PARAS 2 THROUGH 5.

2. IN 1967 STATE OF ALASKA ATTEMPTED TO LEASE AREAS OF CONTINENTAL SHELF BEYOND THREE MILES FROM SHORE IN COOK INLET FOR OIL EXPLORATION. USG FILED A COMPLAINT TO QUIET TITLE TO THIS AREA AND FOR INJUNCTION TO PREVENT STATE OF LIMITED OFFICIAL USE

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ALASKA FROM LEASING OUTSIDE TERRITORIAL SEA. CASE HAS

BEEN IN LITIGATION SINCE THAT TIME. IN JANUARY 1973 US DISTRICT COURT FOR ALASKA FOUND FOR ALASKA ON BASIS THAT EVIDENCE ESTABLISHED A CLAIM TO AN HISTORIC BAY AS RECOGNIZED IN ARTICLE 7(6) OF 1958 CONVENTION ON TERRITORIAL SEA. USG, WHICH TAKES POSITION THAT FACTS DO NOT ESTABLISH HISTORIC CLAIM, APPEALED DECISION. AGREEMENT WAS OBTAINED WITH ALASKAN AUTHORITIES NOT TO ENFORCE DECISION PENDING APPEAL. US COURT OF APPEALS FOR NINTH CIRCUIT RENDERED DECISION ON MARCH 19, 1974, AFFIRMING LOWER COURT OPINION.

3. EFFECT OF DECISION S TO PROVIDE THAT LINE DRAWN FROM CAPE DOUGLAS TO SOUTHERNMOST POINT OF THE BARREN ISLANDS AND THENCE TO POINT GORE MARKS SEAWARD LIMIT OF HISTORIC INLAND WATERS OF US. TERRITORIAL SEA AND CONTIGUOUS FISHERIES ZONE OF US WOULD BE MEASURED SEAWARD FROM THAT LINE RATHER THAN FROM 24-MILE CLOSING LINE WITHIN COOK INLET AS PREVIOUSLY. EFFECT ON FISHERIES WOULD THUS BE TO DISPLACE SEAWARD THE AREA WITHIN WHICH CANADIANS COULD FISH UNDER RECIPROCAL FISHING AGREEMENT. EXACT GEOGRAPHICAL EFFECT AND COORDINATES CAN BE PROVIDED SHORTLY. AS A PRACTICAL MATTER SO FAR AS WE KNOW ONLY CANADIAN HALIBUT FISHING WOULD BE AFFECTED AND EVEN IN THIS CASE WE ARE NOT SURE CANADIANS HAVE FISHED HALIBUT IN LOWER COOK INLET IN RECENT YEARS.

4. DEPARTMENT IS REQUESTING THAT JUSTICE DEPARTMENT APPEAL DECISION TO SUPREME COURT AND THAT APPROPRIATE ACTION BE TAKEN TO OBTAIN A STAY OF ENFORCEMENT OF THE DECISION PENDING OUTCOME OF APPEAL. WE HOPE SUCH A STAY CAN BE OBTAINED PRIOR TO MAY 17 (OPENING OF HALIBUT SEASON). FYI. STAY COULD PROBABLY BE OBTAINED BY MAY 17 IF SOUGHT. HOWEVER, THERE IS ALWAYS POSSIBILITY THAT APPEAL AND STAY MIGHT NOT ULTIMATELY BE SOUGHT BY JUSTICE DEPARTMENT, OR THAT STAY WOULD NOT BE GRANTED BY COURT. END FYI.

5. PENDING STAY OR DECISION ON APPEAL COURT ORDER IS LAW OF THE LAND. FOR BOTH LEGAL AND POLITICAL REASONS WE BELIEVE IMPORTANT THAT EXTENSION OF BILATERAL AGREEMENT BE DONE ON TERMS CONSISTENT WITH US LAW. HIS COULD BE ACCOMPLISHED IF BOTH SIDES AGREE BY SEPARATE EXCHANGE OF NOTES ADDITIONAL TO BASIC EXCHANGE EXTENDING AGREEMENT. LIMITED OFFICIAL USE

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SUCH SEPARATE EXCHANGE WOULD AVOID REOPENING TERMS OF AGREEMENT ITSELF WHICH WE BELIEVE ARE ADVANTAGEOUS TO FISHERMEN OF BOTH COUNTRIES. DEPARTMENT REALIZES CANADIANS MAY NOT BE HAPPY WITH SUGGESTED SOLUTION BUT HOPES THEY CAN ACCEPT IN INTEREST OF AVOIDING REOPENING OF AGREEMENT.

6. THERE FOLLOWS SUGGESTED DRAFT OF US NOTE FOR SEPARATE

EXCHANGE FOR CONSIDERATION BY GOC. WE HAVE NOT ATTEMPTED TO DRAFT SUGGESTED CANADIAN REPLY NOTE.

QUOTE I HAVE THE HONOR TO REFER TO THE AGREEMENT EFFECTED BY EXCHANGE OF NOTES TODAY EXTENDING FOR ONE YEAR THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF

AMERICA AND THE GOVERNMENT OF CANADA ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF THEIR COASTS.

A RECENT DECISION OF THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT HOLDS THAT A LINE DRAWN IN COOK INLET, ALASKA, FROM CAPE DOUGLAS TO THE SOUTHERNMOST POINT OF THE BARREN ISLANDS AND THENCE TO POINT GORE MARKS THE SEAWARD LIMIT OF THE INLAND WATERS OF THE UNITED STATES, BASED ON AN HISTORICAL CLAIM.

ACCORDINGLY, IN THE APPLICATION OF THE AGREEMENT AS EXTENDED TODAY, THE GOVERNMENT OF THE UNITED STATES WILL ACT IN CONSONANCE WITH THE ABOVE-MENTIONED DECISION OR IN ACCORDANCE WITH ANY SUBSEQUENT OR RELATED JUDICIAL DETERMINATION RESPECTING THE STATUS OF THE WATERS INVOLVED.

I WOULD APPRECIATE RECEIVING CONFIRMATION THAT THE FOREGOING IS ACCEPTABLE TO THE GOVERNMENT OF CANADA.

ACCEPT, EXCELLENCY ETC. END QUOTE.

7. PLEASE REPORT GOC REACTION ASAP. IF FURTHER TIME BEYOND APRIL 24 NEEDED FOR CONSIDERATION ONE POSSIBILITY WHICH MIGHT BE CONSIDERED BY BOTH SIDES IS SIMPLE EXTENSION OF AGREEMENT FOR BRIEF PERIOD, PERHAPS TO MAY 15 TO LIMITED OFFICIAL USE

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AVOID GOING INTO HALIBUT FISHING SEASON. KISSINGER

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## Message Attributes

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